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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

8 Supreme Court No. R-10-0037

9 PETITION TO AMEND RULE 17.1(a) AND
ADOPT FORM 28(a) IN RULE 41, ARIZONA
10 RULES OF CRIMINAL PROCEDURE

Comment of the Law Office of David Michael
Cantor on Petition to Amend Rule 17.1(a) and
Adopt Form 28(a) in Rule 41, Arizona Rules of
Criminal Procedure

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12 The petition seeks to amend Rule 17.1(a), Ariz. R. Crim. P., to permit a defendant to
13 enter a plea of guilty or no contest by mail in a limited jurisdiction court, under circumstances
14 outlined in the proposed amendment, and to adopt Form 28(a) in conformity therewith.

15 The State Bar of Arizona filed a comment agreeing "*in theory*" with the proposed
16 modification however suggesting some modifications in the current proposal. Specifically, the
17 State Bar of Arizona suggests striking the work "undue" as it modifies "hardship" as well as
18 *deleting* the categories set forth in subsections (i) through (iv).

19 The Law Office of David Michael Cantor joins in the comments by the State Bar of
20 Arizona and also adds the following comments.

21 The Law Office of David Michael Cantor would amend the proposed Form 28(a) by
22 removing the requirement that the defendant plead guilty to "each and every offense."
23 Currently with telephonic change of plea proceedings the defendant or his/her lawyer, may
24 negotiate with the prosecution for a modified offer and submit that offer to the court in place of
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1 the form. There is no reason a defendant who wishes to use a “mail in” plea should be required
2 to waive their ability to negotiate in good faith with the prosecution.

3 As Rule 17.1(a)(3) is currently used, a defendant who lives outside of the County or
4 State is allowed to appear telephonically to enter a guilty plea. If this defendant retained the
5 services of an attorney, that attorney is able to work with the prosecutor in negotiating a
6 modified plea offer that would not require the defendant to plead guilty to all of the charges.
7 Once a plea offer is negotiated the defendant is required to obtain fingerprints and send those
8 back to their counsel to provide to the court. Often times in DUI cases the defendant is also
9 required to find a local jail facility that will house them for their jail sentence imposed by the
10 Arizona court and also provide a copy of their acceptance letter prior to the telephonic change
11 of plea. The defendant is then advised telephonically by the court of the legal ramifications of
12 entering a guilty plea and enters the guilty plea on the record. This process has been in place
13 and used for many years in almost all limited jurisdiction courts (i.e., Tempe City Court, West
14 Mesa Justice Court, etc.,) and has been successful in facilitating the disposition of many
15 misdemeanor cases such as DUI.

16 By requiring the defendant to plead guilty to each and every offense in the citation there
17 will be few cases resolved by way of Rule 17(a)(4) as attorneys will continue to use 17(a)(3) in
18 order to negotiate with the prosecution. This will in effect make no change on the
19 overburdened courts as telephonic changes of plea still require court time be set aside to aid in
20 the resolution of them.

21 As attorney’s who practice often in the limited jurisdiction courts and utilize Rule
22 17.1(a)(3) regularly, we believe the addition of 17.1(a)(4) could be beneficial for the judicial
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1 system if implemented in an appropriate and easy to use fashion, similar to how the telephonic
2 change of plea process is currently structured.

3 The Law Office of David Michael Cantor proposes that Rule 17.1(a)(4) mimic the
4 current Rule 17.1(a)(3), allowing its use for any case and requiring fingerprints on all "mail in"
5 plea agreements. With this in place it will increase the number of misdemeanor cases that are
6 resolved, minimizing the courts time, leaving the court calendar available for cases that require
7 actual appearances.

8 **RESPECTFULLY SUBMITTED** this 19th day of May, 2011.

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15 Original filed with the Clerk
16 of the Supreme Court of Arizona
this 19th day of May, 2011,

17 By: 
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